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FM AMEMBASSY GUATEMALA
TO RUEHC/SECSTATE WASHDC 7531
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE
RUEHLA/AMCONSUL BARCELONA 0078
RUEABND/DEA HOS WASHDC
RHEFDIA/DIA WASHINGTON DC
RUEAIIA/CIA WASHDC
RHMCSSU/FBI WASHINGTON DC

C O N F I D E N T I A L SECTION 01 OF 02 GUATEMALA 000497

SIPDIS

DEPT PLS PASS TO USAID LAC/CAM - K. SEIFERT

E.O. 12958: DECL: 05/20/2019

TAGS: PGOV KJUS SNAR PINR GT

SUBJECT: ROSENBERG CASE OPENS DOOR TO IMPORTANT RULE OF LAW

REFORM

REF: A. GUATEMALA 453

¶B. GUATEMALA 454

¶C. GUATEMALA 478

Classified By: Acting P/E Counselor Brian Harris for reasons 1.4 (b) and (d)

¶1. (C) Summary: Public opinion, newly focused by the Rosenberg murder on corruption and transparency, created a political opening for the U.S. Embassy, along with the international community, to revive a stalled law to improve transparency in the process of selecting supreme court magistrates. The law passed Congress May 21. Pressure from the Embassy, reiterated by DAS Robinson led the President to reverse his initial opposition to the law. Embassy interventions helped open the legislative space needed to keep fractious Congressional benches in line and pass the law. End Summary.

New court to be elected

¶2. (C) The 13 magistrates of the Guatemalan Supreme Court are elected for five-year terms. The current court's term is drawing to a close, and a new group of magistrates is to be elected not later than October of this year. The UN-led International Commission Against Impunity in Guatemala (CICIG) estimates that at least six of the 13 current magistrates are corrupt. Two of the Magistrates, Edgar Pacay and Augusto Lopez, are suspected of receiving regular payments from narcotraffickers.

New law could help select less corrupt court

¶3. (C) In part because of the decisive role the next court will play in rule of law reform, Congresswoman Nineth Montenegro introduced a bill that would have made the Supreme Court selection process more transparent (*ley de comisiones de postulacion*). This legislation would bar persons with criminal records from serving on the Congressionally-appointed selection committee, mandate that the committee evaluate Supreme Court candidates' professional performance, and publicize candidates' names so they could be exposed to scrutiny. Passage of the legislation was crucial to rebuilding Guatemala's rule of law institutions. Its failure would have increased the likelihood that magistrates for the next court would be selected for their ability to serve commercial and partisan interests rather than for their judicial probity.

¶4. (C) A variety of interests both in and out of government

had conspired to halt consideration of the bill prior to the beginning of the selection process for a new court. While President Colom told the Ambassador early on that he supported the law, he then backtracked -- at the behest of his wife, and sister-in-law Gloria Torres. However, allegations of corruption and conspiracy to commit murder leveled posthumously at the Colom administration by Guatemalan lawyer Rodrigo Rosenberg (ref A) breathed new life into the bill. The scandal triggered a wave of popular pressure for an investigation into Rosenberg's charges and increased popular disgust with Guatemala's corrupt security and justice institutions. Members of the international community and, in particular, the U.S. Embassy took advantage of the new political environment to press publicly and privately for the passage of the stalled transparency law.

¶5. (C) When Congress adjourned its regular session on May 14, the 12-deputy Lider bench was continuing a month-long interpellation of Minister of Government Salvador Gandara and the opposition Partido Patriota party had scheduled a Othe opposition Partido Patriota party had scheduled a follow-on interpellation of Minister of Finance Juan Alberto Fuentes Knight. Under Guatemalan Congressional rules, a party bench can call for the interpellation of a cabinet member. Interpellations are held during a plenary meeting of Congress and trump all other business on the agenda. With their ability to block action in Congress, interpellations function much like Senate filibusters.

¶6. (C) During the week of May 10, the Ambassador worked to reverse President Colom's previous opposition to the transparency law and gain the agreement of the opposition to postpone its planned interpellation of the Finance Minister.

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The Embassy worked with the Lider party to gain its agreement to suspend the interpellation of the Minister of Government. As current chair of the Donor Dialogue Group (G-13) the Ambassador arranged for the COMs of Sweden, Spain, Canada and the United States to meet May 12 with Congress President Alejos on the bill. These two efforts opened the legislative space to consider the law in an extraordinary session.

¶7. (C) On May 19, when the embassy-brokered deals reached the week before appeared to be cracking, the Ambassador contacted President of Congress Roberto Alejos, Lider Party head Manuel Baldizon (currently in France), and his brother Congressman Salvador Baldizon, in order to negotiate an agreement on passing the judicial transparency law. Lider, which split from Colom's party, UNE, acrimoniously in 2008, has been in favor of the judicial reform law (unlike UNE, which changed only after considerable US and foreign pressure last week - see ref B). The Ambassador told the Baldizon brothers there is a short window, basically the week of May 18, to approve the law in time for it to affect the 2009 selection process for supreme and appellate court judges. Torpedoing the law would have immense consequences; it would support organized crime and narcotraffickers, and it would undermine CICIG and USG efforts to strengthen rule of law in Guatemala.

¶8. (C) Following Embassy interventions, Lider and UNE held a joint news conference announcing their agreement to go forward with consideration of the judicial transparency law. Calls by the Embassy to shore up support of the GANA party also helped ensure the law's passage on May 21. After a lengthy floor debate, the law passed by a vote of 95 in favor and one opposed.

¶9. (C) Comment: Given the bad blood between UNE and Lider, and the efforts by a number of forces (including President Colom up to last weekend) to find an excuse to not pass the judicial transparency law, the U.S. has played a critical role in working out this deal. The next step will be to keep pressure on the Guatemalan Congress, and to hold President Colom to his promise to Deputy Assistant Secretary Robinson

on March 18, to pass other urgent rule of law reforms such as the extension of CICIG and the creation permanent of high-impact courts.

McFarland